

Order below Exh. 124 in Sessions Case No. 64/2023
State Vrs. Ashish & Others.

(Passed on this 29th September, 2025)

It is an application for recalling the prosecution witness Vaibhav Ramdas Sable P.W. 3 for further cross-examination. It is contended by the accused that the accused are facing trial for an offence punishable under sections 304B and 498A read with section 34 of the Indian Penal Code, 1860 (in short "the IPC"). The prosecution has examined Vaibhav Ramdas Sable as a P.W. 3. He was cross-examined by the learned advocate of the accused. Thereafter, the prosecution examined other witnesses and ultimately the matter was adjourned for final argument.

2] It is contended that while preparing the final argument, the advocate of the accused came to know that by oversight he failed to bring on record the material omissions while recording the cross-examination of Vaibhav Sable P.W. 3.

3] It is contended that Vaibhav Sable P.W. 3 in para No. 2 of his examination-in-chief has deposed that, "*after eight days of giving that amount, Jayshri visited my house and stayed for 2-3 days*". "*She also told that, accused Ashish had illicit relations with accused Sharda and with his cousin sister. Accused Ashish and Shobha were mentally harassing Jayshri for the reason that, she delivered a female child*".

4] It is contended that the above material facts have not been stated by Vaibhav Sable P.W. 3 while recording his statement under section 164 of the Criminal Procedure Code,

1973 (in short “the Cr.P.C.”) as well as certain facts have not been disclosed by him before the Investigation Officer.

5] The aforesaid facts brought on record by the prosecution, which are not stated before the learned Magistrate or the Investigation Officer are material one. The advocate of the accused by oversight failed to bring the said omissions on record. Therefore, to that extent further cross-examination of Vaibhav Sable PW. 3 is necessary. If the application is allowed, no prejudice will be caused to the prosecution.

6] The prosecution resisted the application by filing say on overleaf of the application contending that the alleged omissions i.e. “*after eight days of giving that amount*” is mentioned in the statement recorded under section 161 of Cr.P.C. However, the said fact was not stated by the witness while recording his statement under section 164 of Cr.P.C. Therefore, suitable order may please be passed.

7] Heard the learned advocate of the accused. He has taken me through the evidence of Vaibhav Sable PW. 3 and his statements recorded under sections 161 and 164 of Cr.P.C. On perusal of the statement recorded under section 161 of Cr.P.C., it reveals that Vaibhav Sable PW. 3 had categorically stated before the Investigation Officer that after payment of an amount of Rs. 2,50,000/- the accused subjected her with cruelty and husband of the deceased told her that he has illicit relations with accused Sharda and with his cousin sister and mentally harassing her as she delivered a female child.

8] Therefore, the omission is only to the extent that “after eight days of giving that amount Jayshri visited his house and stayed for 2-3 days”. Even while recording his statement under section 164 of Cr.P.C. the witness had categorically stated that even after payment of Rs. 2,50,000/- the deceased was subjected to cruelty as she failed to pay the amount of Rs 5 Lakh. He had not stated while recording his statement that he came to know from the deceased that accused Ashish told her that he has illicit relations with accused Sharda and his cousin sister and that the accused subjected her with cruelty and that the accused mentally harassed her as she delivered a female child.

9] The learned advocate of the accused has submitted that in the case of *Dasu and others Vrs. State of Maharashtra, 1985 Cri. L.J. 1933*, the Hon’ble Bombay High Court has held that before using any prior statement of a witness to contradict him, attention of the witness should be drawn to the relevant portion and he should be given an opportunity of explaining any apparent discrepancy.

10] He further relied upon the case of *Mansaram Shaligam Sawalkar & Anr. Vrs. State of Maharashtra, 2011 ALL MR (Cri) 3651*, wherein it is held that the object of the trial is to find out truth and it is the right of the accused to have fair opportunity.

11] So far as regards the fair opportunity, it is already given to the accused. Now the only question is that whether in the given set of facts the witness can be recalled for further

cross-examination on the aforesaid point. Looking to the nature of omissions, at this stage it's probative value can not be decided. The accused are facing serious charges and therefore, if the opportunity is given to the accused no prejudice will be caused to the prosecution. On the contrary, the witness would also get an opportunity to explain. Therefore, the application deserves to be allowed. Hence, the following order :-

ORDER

- 1] The application is allowed.
- 2] Issue summons to P.W.3 Vaibhav Ramdas Sable for further cross-examination only on the aforesaid points.

Date : 29.09.2025.

(S.B. Kachare)
Sessions Judge, Akola.

Certificate

I hereby certify that the contents of this PDF file are same word for word as per original order:

Name of PA/Steno : A.J. Dharamkar.
Court's Name : Principal District & Sessions
Judge, Akola
Date : 29.09.2025
Transcribed on : 29.09.2025
Signed by PO. on : 30.09.2025
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